



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

June 9, 2017

KIMBERLEY HARRINGTON

Acting Commissioner

Mr. Edmond DeSantis, Board President
Ridgefield Park Board of Education
712 Lincoln Avenue
Ridgefield Park, NJ 07660

Dear Mr. DeSantis:

SUBJECT: Ridgefield Park School District - Lease/Loan
OFAC Case# INV-003-17

The New Jersey Department of Education, Office of Fiscal Accountability and Compliance, conducted a review of the lease and loan which was entered into by the Ridgefield Park Board of Education (Board) and the Saint Francis of Assisi Church of Ridgefield Park. The review, detailed in the attached Report of Examination, identifies issues to be addressed by the Board. Please provide a copy of the report for each board member.

Utilizing the process outlined in the attached "Procedures for LEA/Agency Response, Corrective Action Plan and Appeal Process," pursuant to N.J.A.C. 6A:23A-5.6, the Board is required to publicly review and discuss the findings in this report at a public board meeting no later than 30 days after receipt of the report. Within 30 days of the public meeting, the Board must adopt a resolution certifying that the findings were discussed at a public meeting and the Board approved a corrective action plan (CAP) which addresses the findings raised in the report and/or submit an appeal of any findings in dispute. A copy of the resolution and the approved CAP and/or notice of intent to appeal must be sent to this office within 10 days of adoption by the Board. Direct your response to my attention.

Also, pursuant to N.J.A.C. 6A:23A-5.6(c), you must post the findings of the report and the Board's CAP on your school district's website. Should you have any questions, please contact Thomas C. Martin, Manager, Investigations Unit, at (609) 633-9615.

Sincerely,

Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance

RJC/O:\Investigation\fboney\Ridgefield Park--Lease and Loan\Reports\INV_003_17 Final Report.docx
Attachments

c: Karin Garver Norah Peck
Robert Bumpus Timothy G. Boney
David Saenz Eric Koenig
Glenn Forney Wayne Demikoff
Robert Higgins Stephen Eells

www.nj.gov/education

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
INVESTIGATIONS UNIT

RIDGEFIELD PARK SCHOOL DISTRICT

LEASE/LOAN

OFAC CASE #INV-003-17

REPORT OF EXAMINATION

JUNE 2017

**RIDGEFIELD PARK SCHOOL DISTRICT
LEASE/LOAN**

INVESTIGATIVE SUMMARY

The New Jersey Department of Education (NJDOE), Office of Fiscal Accountability and Compliance (OFAC), conducted a review of the lease and loan which was entered into by the Ridgefield Park Board of Education (Board) and the Saint Francis of Assisi Church of Ridgefield Park (Church) in the Archdiocese of Newark (Archdiocese). The OFAC's determination to conduct a review was prompted by information received from the state monitor assigned to the Ridgefield Park School District (District).

On June 11, 2014, due to the need for additional classroom space for District students, the Board entered into a ten-year lease with the Church. The cost of the lease over ten years totals \$5,932,000.58. The lease is for the rental of two Church-owned facilities that were formerly used as parochial elementary schools. Leases in excess of five years require the Board to conduct a minimum of one public hearing prior to the adoption of a resolution endorsing a facility lease in excess of five years. Notice of the upcoming public hearing must be published in a publication of record before the hearing.

In addition to the ten-year lease, on November 10, 2014, the Board became a party to a loan with the Church in the total amount of \$629,754.08. As explained below, the Church agreed to directly pay the contractors and pay for materials needed to make the required improvements to the parochial school buildings in order for the buildings to be used for public school educational purposes. The Board is to repay the loan during years three through seven of the lease. The Board, however, was unaware of this arrangement and financial obligation until October of 2015 *which was several months after* a formal repayment schedule had been prepared by the Church and signed on July 28, 2015, by the then assistant superintendent, Eric Koenig (Mr. Koenig), and on August 11, 2015, by Reverend Larry Evans II (Reverend Evans) for the Church. This repayment schedule incorporated both the lease payments and the loan repayments. *The Board was never presented with a resolution regarding the loan, thus the Board never voted upon the loan.*

The OFAC investigation included the review, analysis and confirmation of information found within various documents. The investigation also included interviews with the District's current superintendent, Mr. Koenig; the District's former interim superintendent, Dr. John C. Richardson (Dr. Richardson); the District's former school business administrator, Matthew Paladino (Mr. Paladino); and other employees of the District as well as the president of the Board, Edmond DeSantis (Mr. DeSantis); and former vice president of the Board, Robert Thiemann (Mr. Thiemann). The OFAC investigator also had meetings and conferences with the state monitor assigned to the District.

The focus of the OFAC's District investigation was:

1. The ten-year lease with rent payments totaling \$5,932,000.58;
2. The \$629,754.08 loan; and

3. Students occupying the premises before approval from the NJDOE, Office of School Facilities (OSF).

1. Lease

N.J.A.C. 6A-26-10.11(a) provides:

“A district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing a facility lease in excess of five years. All provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 through 21, shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district, or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed facilities to be leased, the estimated cost, and the proposed method of funding the lease.”

N.J.A.C. 6A-26-10.11(b) provides further:

“The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed lease, the estimated cost, and the proposed funding method.” (underline added)

During the OFAC investigation, an extensive search was conducted to locate any proof that a notice in compliance with N.J.A.C. 6A-26-10.11 was published prior to the April 30, 2014, or the June 25, 2014, Board meetings at which Board resolutions concerning the lease were voted upon. The search revealed that no such notice was published. Additionally, no one interviewed had any knowledge or recollection of the required notice being published. Accordingly, “taxpayers and other interested persons” had no opportunity to provide comments on the Board entering into a ten-year lease that has a total projected cost of \$5,932,000.58.

History of the Lease’s Development in Regard to Lack of Public Notice

Prior to the Board meetings of April 30, 2014, and June 25, 2014, representatives of the District, diocese and parish met regarding the issue of the Board leasing Church-owned facilities that were formerly used as parochial elementary schools. The properties were referred to by the parties as the “new building” and the “old building.” The new building was built sometime in the 1960s. The old building refers to the previous elementary school that was located in the original (converted) Church building that was built in the early 1900s. These two designations were later utilized in the written lease.

On April 30, 2014, Resolution #122 was introduced and approved by the Board concerning the proposed lease. The resolution provided that:

“**RESOLVE** that the Board of Education, on the recommendation of Dr. John C. Richardson, Interim Superintendent of Schools, approves that the district enter into an agreement to lease the

new section of St. Francis School with the intent to lease the entire facility by September 2015.”¹ The term “new section” is reflected in the resolution; the term “new building” is utilized in the written lease.

A written ten-year lease between the Board and the Church was made on June 11, 2014. The cost of the lease over ten years totals \$5,932,000.58.

On June 25, 2014, Resolution #155 was introduced and approved by the Board concerning the lease. The resolution provided that:

“RESOLVE that the Ridgefield Park Board of Education enter into a lease agreement with Saint Francis of Assisi Church, 114 Mount Vernon Street, Ridgefield Park, New Jersey, for usage of the school building for educational purposes. The commencement date is July 1, 2014 and the expiration date is June 30, 2024.”²

Thus, the written ten-year lease, dated June 10, 2014, had been signed and entered into by the respective parties no later than June 11, 2014, approximately two weeks before the June 25, 2014, public meeting.

Conclusion

The OFAC investigation revealed no notice was published as required by N.J.A.C. 6A-26-10.11 which would have allowed taxpayers and other interested parties to be heard prior to the Board approving the ten-year lease in this case.

Recommendation

The District is directed to prepare and submit a corrective action plan (CAP) to the OFAC detailing how the Board intends to address the lease in the present case which is in excess of five years. Furthermore, the CAP should set forth what the Board will do to ensure future compliance with state statutes and regulations involving leases.

2. The \$629,754.08 loan

At the outset, the OFAC found no legal authority allowing and/or authorizing the loan which obligated the Board.

¹ Resolutions #122 (April 30, 2014) and #155 (June 25, 2014) are almost identical in language. Specifically, “RESOLVE that the Board of Education, on the recommendation of Dr. John C. Richardson, Interim Superintendent of Schools, approves that the district *enter into an agreement to lease . . .*” (Resolution #122) (italized added)

² “RESOLVE that the Ridgefield Park Board of Education *enter into a lease agreement . . .*” (Resolution #155) (italized added)

As worded, it is unclear if any different intended purposes were being proposed by the two resolutions. In either event, both resolutions are consistent with the District’s intent to enter into a lease agreement. Furthermore, no record of notice to the public as required by N.J.A.C. 6A-26-10.11 could be found.

Genesis of the Loan and Lack of a Formal Loan Document

During the course of the OFAC investigation, it was determined that starting in or about late 2013 or early 2014 meetings and/or discussions were held between representatives of the District and the Church concerning leasing the Church's (dormant) elementary school. On June 11, 2014, the Board entered into the ten-year lease agreement.

The OFAC investigation found that the only documentation of the loan and the loan essentials consisted of two letters of correspondence, two emails and a loan repayment schedule which incorporated the loan payments as part of the monthly lease payments. There was no stand-alone loan document executed between the parties setting forth the details and/or obligations of the parties in relation to the loan.

On November 10, 2014, a letter was sent by Dr. Richardson to Rev. Evans, pastor of the Church. The letter was a "confirmation of our discussion" that occurred earlier in the day between Rev. Evans and Dr. Richardson. The letter set forth various construction projects that had to be completed in order for the District to gain state approval for use of the buildings as educational facilities. The letter stated the estimated cost of those various projects "would be in excess of \$500,000."

The November 10, 2014, letter further set forth that: "The Archdiocese would agree to proceed with this project according to the Board of Education guidelines, using only vendors approved by the BOE. The Archdiocese would subsequently contract directly with the preferred vendor and the BOE would agree to pay the cost of the renovation over years three through seven of the lease. The BOE would compensate the Archdiocese for the entire project cost plus a fairly negotiated interest rate based on the five-year term."³

Thus, the Church would loan the money to the Board to pay for renovations to be made to the former parochial elementary school.

Subsequently, a July 24, 2015, letter from the Church sent by Rev. Evans to Mr. Koenig (the then assistant superintendent, appointed superintendent effective September 1, 2015) set forth the "total of the loan" as \$607,000.08. This letter included "an addendum to the lease, the new lease rates, showing the changes covering years 3 thru 8 [sic] of the lease agreement." The addendum is a document showing a ten-year payment schedule which incorporated the lease and loan payments. Finally, the letter also set forth that the "interest rate would be 2.75% and is billed quarterly."

On November 19, 2015, an email from Mr. Paladino was sent to the Church. A response from Rev. Evans was received. The email subject line indicated it was "Paper work for loan." The email was a request for supporting documentation of the \$607,000.08 loan. The response stated

³ During the interview with Rev. Evans, the OFAC investigator was advised by him that the Archdiocese actually lends the money to an individual parish who in turn lends it to the borrower. The lease rental amount (based on square footage) and interest rate are set by the Archdiocese.

the actual amount spent by the "Board of Ed" was \$629,754.08.⁴ The email stated "a bill for J & J electrical was somehow missed in the final calculation," and Rev. Evan's response stated "this oversight will cause a slight adjustment for the rental agreement."

The OFAC investigator interviewed the Board president, Mr. DeSantis, and the former Board vice president, Mr. Thiemann. Mr. Thiemann stated that he did not become aware of the loan until a comment was made by Mr. Paladino sometime in October 2015. Mr. DeSantis stated he did not become aware of the loan's existence until Mr. Koenig advised him sometime in October 2015. According to Mr. DeSantis, several members of the Board were present when Mr. Koenig made this comment at the 2015 New Jersey School Board Association Convention held annually in Atlantic City, New Jersey.

The OFAC investigation found:

- There was no stand-alone loan document executed between the parties setting forth the details of the loan.
- *The loan repayment schedule was not included in the lease upon which the Board DID vote. [albeit, and as set forth in point one above, voted on at a meeting for which there was no advance notice to the public per N.J.A.C. 6A-26-10.11]*
- *The Board was never presented with a resolution regarding the loan prepared by any District administrator or formally informed during Board business by any District administrator of the loan existence, thus the Board never voted upon the loan.*

Conclusion

The OFAC found no legal authority under N.J.S.A. 18A, et seq. or N.J.A.C. 6A, et seq. in the circumstances of this case for the loan between the Board and the Church.

Recommendation

The District is directed to prepare and submit a CAP to the OFAC detailing how the Board intends to remedy the loan in the present case.

3. Occupation of the Premises before State Approval

N.J.A.C. 6A:26-3.11(a) Initiation of other capital projects:

⁴Although the email stated that the actual amount spent by the "Board of Ed" was \$629,754.08, the November 10, 2014, letter set forth that "The Archdiocese would subsequently contract directly with the preferred vendor and the BOE would agree to pay the cost of the renovation over years three through seven of the lease."

“Other capital projects shall be reviewed by the Division based on the following criteria: . . . (4) Whether the facility, if it is to house students, conforms to the educational adequacy requirements at N.J.A.C. 6A:26-5.2.”

The OFAC investigation found that kindergarten students began using the new section in September 2014, and the first graders began using the old section in September 2015. However, the other capital project approval for the old section, was not obtained from the OSF until November 9, 2015. The approval was reflected in correspondence from OSF on that respective date.

N.J.S.A. 18A:20-4.2 Acquisition of property; authority required provides:

“The board of education of any school district may, for school purposes: (e) . . . lease . . . a building with . . . any other individual or entity properly authorized to do business in the State; provided that: . . . (2) the portion of the building to be used as a school meets regulations of the Department of Education; . . . (4) in the case of a lease, that any lease in excess of five years shall be approved by the Commissioner of Education and the Local Finance Board in the Department of Community Affairs; . . .”

In this case, the lease, concerning both the old and new sections, did not receive state approval from OSF until November 13, 2015. The approval was reflected in correspondence from the OSF on that respective date.

Conclusion

Students occupied the leased premises before state approval from OSF was obtained.

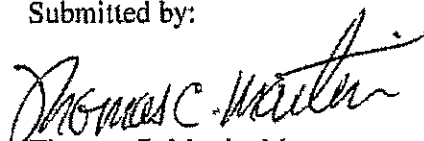
Recommendation

The District is directed to prepare and submit a CAP to the OFAC detailing what the Board will do to ensure future compliance with state statutes and regulations involving other capital projects.

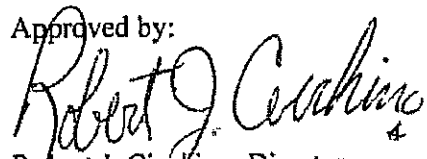
REFERRAL

This matter is being referred to the State Board of Examiners and for whatever action it deems appropriate with respect to the actions and/or inactions of Mr. Paladino, Mr. Richardson and Mr. Koenig concerning the District entering into a ten-year lease with the Church; the District entering into a loan agreement with the Church, and entering into the loan agreement without notifying the Board; and the District allowing students to occupy a premise prior to approval from the OSF.

Submitted by:


Thomas C. Martin, Manager
Investigations Unit

Approved by:


Robert J. Cicehino, Director
Office of Fiscal Accountability and Compliance

Investigator:

Timothy G. Boney